

(CORRECTED)

AMENDMENTS TO LB 876

1 1. Strike the original sections and insert the following
2 new sections:

3 "Section 1. (1) By January 1, 2004, the Supreme Court
4 shall have rules of pleading in civil actions promulgated which are
5 not in conflict with the statutes governing such matters.

6 (2) For all civil actions filed on or after January 1,
7 2004:

8 (a) The rules of pleading promulgated by the Supreme
9 Court shall apply;

10 (b) The plaintiff's initial pleading shall be a petition
11 when that designation is provided elsewhere by statutes. In all
12 other civil actions the plaintiff's initial pleading shall be a
13 complaint;

14 (c) The cross-petition, cross-bill, and cross-suit are
15 abolished. Demurrers to a pleading and special appearances shall
16 not be used. The plea in bar, plea in abatement, and other
17 dilatory pleas shall not be used in civil actions; and

18 (d) All pleadings shall be construed as to do substantial
19 justice.

20 Sec. 2. (1) An amendment of a pleading that does not
21 change the party or the name of the party against whom the claim is
22 asserted relates back to the date of the original pleading if the
23 claim or defense asserted in the amended pleading arose out of the

1 conduct, transaction, or occurrence set forth or attempted to be
2 set forth in the original pleading.

3 (2) If the amendment changes the party or the name of the
4 party against whom a claim is asserted, the amendment relates back
5 to the date of the original pleading if (a) the claim or defense
6 asserted in the amended pleading arose out of the conduct,
7 transaction, or occurrence set forth or attempted to be set forth
8 in the original pleading, and (b) within the period provided for
9 commencing an action the party against whom the claim is asserted
10 by the amended pleading (i) received notice of the action such that
11 the party will not be prejudiced in maintaining a defense on the
12 merits and (ii) knew or should have known that, but for a mistake
13 concerning the identity of the proper party, the action would have
14 been brought against the party.

15 Sec. 3. Section 24-209, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 24-209. (1) One copy of the Nebraska Reports and one
18 copy of the Nebraska Appellate Reports shall be furnished by the
19 Supreme Court to each judge of the Supreme Court, Court of Appeals,
20 Nebraska Workers' Compensation Court, and district, separate
21 juvenile, and county courts, to each county law library, and to
22 each state library, ~~to each officer of the executive departments of~~
23 ~~this state, to the Clerk of the Legislature, and to each judge of~~
24 ~~the United States District and Circuit Courts of this state, and~~
25 two copies of such reports shall be furnished to the Legislative
26 Council. The State Court Administrator shall be furnished as many
27 additional copies as he or she deems necessary for the operation of

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1 the Court of Appeals and the Supreme Court. ~~7 two copies, to the~~
2 ~~library of the College of Law of the University of Nebraska, as~~
3 ~~provided in sections 85-176 and 85-177, to the Nebraska~~
4 ~~Publications Clearinghouse, eight copies, and to the State Court~~
5 ~~Administrator's Office, up to fifteen copies.~~

6 (2) One advance copy of the opinions of the Nebraska
7 Supreme Court in pamphlet form, known as the Nebraska Advance
8 Sheets, and one advance copy of the opinions of the Nebraska Court
9 of Appeals in pamphlet form, known as the Decisions of the Nebraska
10 Court of Appeals, shall be furnished to each judge of the Supreme
11 Court, Court of Appeals, Nebraska Workers' Compensation Court, and
12 district, separate juvenile, and county courts, as many advance
13 copies as may be requested by the members of the Legislature shall
14 be furnished to the Clerk of the Legislature, ~~two advance copies~~
15 ~~shall be furnished to each standing committee of the Legislature,~~
16 ~~up to twenty-five advance copies shall be furnished to the Attorney~~
17 ~~General, one advance copy shall be furnished to the Governor, and~~
18 the State Court Administrator shall be furnished as many advance
19 copies as he or she deems necessary for the operation of the Court
20 of Appeals and the Supreme Court.

21 (3) The balance of the Nebraska Reports, Nebraska
22 Appellate Reports, Nebraska Advance Sheets, and Decisions of the
23 Nebraska Court of Appeals shall be sold as called for at such price
24 as shall be prescribed by the Supreme Court. The Supreme Court
25 shall also prescribe the price for microform copies of the reports.
26 The money received from such sales shall be paid into the Supreme
27 Court Reports Cash Fund which is hereby created.

1 (4) Upon request from any office or entity entitled to
2 free copies of the Nebraska Reports, the Nebraska Appellate
3 Reports, the Nebraska Advance Sheets, or the Decisions of the
4 Nebraska Court of Appeals, the court may stop sending the
5 publications to such office or entity until the request is
6 withdrawn.

7 Sec. 4. Section 25-217, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 25-217. An action is commenced on the date the ~~petition~~
10 complaint is filed with the court. The action shall stand
11 dismissed without prejudice as to any defendant not served within
12 six months from the date the ~~petition~~ complaint was filed.

13 Sec. 5. Section 25-318, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-318. Of the parties to the action, those who are
16 united in interest ~~must~~ shall be joined as plaintiffs or
17 defendants; but if the consent of one who should have been joined
18 as plaintiff cannot be obtained, he or she may be made a defendant,
19 the reason being stated in ~~petition~~ the complaint.

20 Sec. 6. Section 25-321, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 25-321. When the plaintiff ~~shall be~~ is ignorant of the
23 name of the defendant, such defendant may be designated in any
24 pleading or proceeding by any name, or any name and description,
25 followed by the words, "real name unknown". In any such case the
26 person intended shall thereupon be regarded as a defendant in such
27 action or proceeding and as sufficiently identified therein for all

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1 purposes, including service of summons or constructive service when
2 authorized and as prescribed ~~by the Code of Civil Procedure of the~~
3 ~~State of Nebraska~~ in Chapter 25. In any action wherein it is
4 alleged in the ~~petition~~ complaint or other pleading that there are
5 persons who have or that there are persons who claim or appear to
6 have some interest in, right or title to, or lien upon any real or
7 personal property within this state involved in such action, and
8 that the ownership of, interest in, rights or title to, or lien
9 upon such property of such persons, does not appear of record, in
10 or by their respective names, in the county wherein such property
11 is situated, and that the plaintiff or person in whose behalf such
12 allegations are made, after diligent investigation and inquiry, is
13 unable to ascertain and does not know the names or whereabouts if
14 in this state, or the residence of such persons, such action may
15 proceed against all such persons designated as "all persons having
16 or claiming any interest in" such property which shall be
17 accurately and definitely described, followed by the words, "real
18 names unknown".

19 Sec. 7. Section 25-323, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 25-323. The court may determine any controversy between
22 parties before it when it can be done without prejudice to the
23 rights of others or by saving their rights; but when a
24 determination of the controversy cannot be had without the presence
25 of other parties, the court must order them to be brought in.

26 Any person whose negligence was or may have been a
27 proximate cause of an accident or occurrence alleged by the

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1 plaintiff, other than parties who have been released by the
2 plaintiff and are not subject to suit pursuant to section
3 25-21,185.11, may be brought into the suit by any ~~defendant~~ party
4 in the manner provided in section 25-331 or 25-705. ~~by any~~
5 ~~plaintiff in the manner provided in sections 25-849 and 25-852.~~

6 Sec. 8. Section 25-328, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 25-328. Any person who has or claims an interest in the
9 matter in litigation, in the success of either of the parties to an
10 action, or against both, in any action pending or to be brought in
11 any of the courts of the State of Nebraska, may become a party to
12 an action between any other persons or corporations, either by
13 joining the plaintiff in claiming what is sought by the ~~petition~~
14 complaint, or by uniting with the defendants in resisting the claim
15 of the plaintiff, or by demanding anything adversely to both the
16 plaintiff and defendant, either before or after issue has been
17 joined in the action, and before the trial commences.

18 Sec. 9. Section 25-330, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 25-330. The intervention shall be by ~~petition~~ complaint,
21 which ~~must~~ shall set forth the facts on which the intervention
22 rests, and all the pleadings therein shall be governed by the same
23 rules as ~~obtain in regard to~~ other pleadings provided for ~~by this~~
24 ~~code in Chapter 25~~. If such ~~petition~~ complaint is filed during
25 term, the court shall direct the time in which answers thereto
26 shall be filed.

27 Sec. 10. Section 25-331, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 25-331. (1) At any time after commencement of the
3 action, a ~~defendant~~ defending party, as a third-party plaintiff,
4 may cause a summons and complaint to be served upon a person not a
5 party to the action who is or may be liable to ~~him~~ the third-party
6 plaintiff for all or part of the plaintiff's claim against ~~him~~ the
7 third-party plaintiff. The third-party plaintiff need not obtain
8 leave to make the service if the third-party plaintiff files the
9 third-party complaint not later than ten days after filing the
10 original answer. Otherwise the third-party plaintiff must obtain
11 leave of the trial court on motion upon notice to all parties to
12 the action. before filing a third-party complaint. When
13 ~~authorized by the trial court the~~ The person served with the
14 summons and third-party complaint, hereinafter called the
15 third-party defendant, shall have all the rights of a defendant
16 including the rights authorized by this section. The third-party
17 defendant may assert against the plaintiff any defenses which the
18 third-party plaintiff has to the plaintiff's claim. The
19 third-party defendant may also assert any claim against the
20 plaintiff arising out of the transaction or occurrence that is the
21 subject matter of the plaintiff's claim against the third-party
22 plaintiff. The plaintiff may assert any claim against the
23 third-party defendant arising out of the transaction or occurrence
24 that is the subject matter of the plaintiff's claim against the
25 third-party plaintiff. The third-party defendant shall have all
26 the rights of a defendant including the rights authorized by this
27 section. The court on its own motion, or motion of any party, may

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1 move to strike the third-party claim, or for its severance or
2 separate trial if the third-party claim should delay trial, might
3 tend to confuse a jury, or in any way jeopardize the rights of the
4 plaintiff. A third-party defendant or subsequent defendants may
5 proceed under this section.

6 (2) When a counterclaim is asserted against a plaintiff,
7 the plaintiff may cause a third party to be brought in under
8 circumstances which under this section would entitle a defendant to
9 do so.

10 Sec. 11. Section 25-501, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 25-501. A civil action must be commenced by filing ~~of~~ a
13 ~~petition~~ complaint in the office of the clerk of a proper court.

14 Sec. 12. Section 25-503.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-503.01. (1) The summons shall be directed to the
17 defendant or defendants, and contain the names of the parties and
18 the name and address of the plaintiff's attorney, if any, otherwise
19 the address of the plaintiff. It shall notify defendant that in
20 order to defend the lawsuit an appropriate written response ~~must~~
21 shall be filed with the court within thirty days after service, and
22 that upon failure to do so the court may enter judgment for the
23 relief demanded in the ~~petition~~ complaint.

24 (2) A judgment by default shall not be different in kind
25 from that demanded in the ~~petition~~ complaint. If only special
26 damages are demanded a judgment by default shall not exceed the
27 amount demanded in the ~~petition~~ complaint.

1 Sec. 13. Section 25-504.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-504.01. A copy of the ~~petition~~ complaint shall be
4 served with the summons, except when service is by publication.
5 The plaintiff shall deliver to the clerk sufficient copies of the
6 ~~petition~~ complaint at the time it is filed.

7 Sec. 14. Section 25-516.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 25-516.01. (1) The voluntary appearance of the party is
10 equivalent to service.

11 (2) ~~Prior to filing any other pleading or motion, a~~
12 ~~special appearance may be made for the purpose of objecting to the~~
13 ~~jurisdiction of the court over the person of the defendant. The~~
14 ~~defendant's assertion of a claim for affirmative relief by way of~~
15 ~~counterclaim, cross-claim, or third-party claim waives any~~
16 ~~objection that the court erred in overruling the special~~
17 ~~appearance. The defendant's participation in proceedings on any~~
18 ~~issue other than jurisdiction over the person waives any objection~~
19 ~~that the court erred in overruling the special appearance except~~
20 ~~the objection that the defendant is not amenable to process issued~~
21 ~~by a court of this state~~ A defense of lack of jurisdiction over the
22 person, insufficiency of process, or insufficiency of service of
23 process may be asserted only under the procedure provided in the
24 pleading rules adopted by the Supreme Court. If any of those
25 defenses are asserted either by motion or in a responsive pleading
26 and the court overrules the defense, an objection that the court
27 erred in its ruling will be waived and not preserved for appellate

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1 review if the party asserting the defense either (a) thereafter
2 files a demand for affirmative relief by way of counterclaim,
3 cross-claim, or third-party claim or (b) fails to dismiss a demand
4 for such affirmative relief that was previously filed. If any of
5 those defenses are asserted either by motion or in a responsive
6 pleading and the court overrules the defense, an objection that the
7 court erred in its ruling on any issue, except the objection that
8 the party is not amenable to process issued by a court of this
9 state, will be waived and not preserved for appellate review if the
10 party asserting the defense thereafter participates in proceedings
11 on any issue other than those defenses.

12 Sec. 15. Section 25-519, Revised Statutes Supplement,
13 2000, is amended to read:

14 25-519. The publication shall be made once in each week
15 for three successive weeks in some newspaper printed in the county
16 where the ~~petition~~ complaint is filed if there is any printed in
17 such county and, if there is not, in some newspaper printed in this
18 state of general circulation in that county. It ~~must~~ shall contain
19 a summary statement of the ~~object and prayer~~ claim for relief of
20 the ~~petition~~ complaint, mention the court wherein it is filed, and
21 notify the person or persons thus to be served when they are
22 required to answer.

23 Sec. 16. Section 25-525, Revised Statutes Supplement,
24 2000, is amended to read:

25 25-525. A party against whom a judgment or order has
26 been rendered without other service than by publication in a
27 newspaper, may, at any time within five years after the date of

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1 entry of the judgment or order, have the same opened to allow the
2 applicant to appear in court and make a defense. Before the
3 judgment or order is opened, the applicant shall give notice to the
4 adverse party of the intention to make such application and shall
5 file a full answer to the petition or complaint, pay all costs, if
6 the court requires them to be paid, and make it appear to the
7 satisfaction of the court, by affidavit, that during the pendency
8 of the action the applicant had no actual notice thereof in time to
9 appear in court and make a defense. The title to any property, the
10 subject of the judgment or order sought to be opened, which by it,
11 or in consequence of it, has passed to a purchaser in good faith,
12 shall not be affected by any proceedings under this section, nor
13 shall the proceedings affect the title of any property sold before
14 judgment under an attachment. The adverse party, on the hearing of
15 an application to open a judgment or order, as provided by this
16 section, shall be allowed to present counter-affidavits, to show
17 that during the pendency of the action the applicant had notice
18 thereof in time to appear in court and make a defense.

19 Sec. 17. Section 25-531, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 25-531. When the summons has been served or publication
22 made, the action is pending so as to charge third persons with
23 notice of pendency. While the action is ~~7 and while~~ pending no
24 interest can be acquired by third persons in the subject matter
25 thereof, as against the plaintiff's title. In ~~7 PROVIDED, in~~ all
26 actions brought to affect the title to real property, the plaintiff
27 may either at the time of filing his or her ~~petition~~ complaint or

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1 afterwards, file, or in case any defendant sets up an affirmative
2 cause of action, and demands relief which shall affect the title to
3 real estate, he or she may, at the time of filing such answer, or
4 at any time afterwards, file with the clerk or register of deeds of
5 each county in which the ~~said~~ real estate thus to be affected, or
6 any part thereof, ~~may be~~ is situated, a notice of the pendency of
7 such action. The notice shall contain ~~and containing~~ the names of
8 the parties, the object of the action, and a description of the
9 property in such county sought to be affected thereby. If the
10 action ~~be~~ is for foreclosure of a mortgage, such notice ~~must~~ shall
11 contain the date of the mortgage, the parties thereto, and the time
12 and place of recording the same. The clerk or register of deeds of
13 such county shall record the notice thus filed and enter the same
14 upon the numerical index of all lands, any part of which is
15 included in the description in ~~said~~ the notice, for which he or she
16 shall be entitled to receive filing fees in accordance with
17 sections 33-109 and 33-112, to be paid by the person filing such
18 notice, and which shall be taxed as part of the costs in ~~said~~ the
19 action. From the time of filing such notice the pendency of such
20 action shall be constructive notice to any purchaser or
21 encumbrancer to be affected thereby. Every ~~and every~~ person
22 whose conveyance or encumbrance is subsequently executed or
23 subsequently recorded shall be deemed to be a subsequent purchaser
24 or encumbrancer, and shall be bound by all proceedings taken in
25 ~~said~~ the action after the filing of such notice to the same extent
26 as if he or she were made a party to the action. The court in
27 which such action was commenced or any judge thereof may at any

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1 time thereafter on the application of any person aggrieved, ~~and~~ on
2 good cause shown, and on such notice as the court or judge may
3 determine, order ~~said the~~ notice to be canceled by the clerk or
4 register of deeds of any county in which ~~said the~~ notice may have
5 been filed or recorded by filing a notice of release. In actions
6 ~~where in which~~ such notice ~~may be~~ is filed in a county or counties,
7 other than the county in which the action ~~may be~~ is pending, the
8 county clerk or the register of deeds of the county in which the
9 action was begun may cancel such notice by executing a written
10 release under his or her hand and seal by reason of the ~~said the~~
11 order of the court or judge, and forward such release by mail to
12 the county clerk or register of deeds of the county in which ~~said~~
13 the notice has been filed or recorded, and which certificate such
14 county clerk or register of deeds shall record in the records of
15 his or her office. At any time after such notice of pendency ~~shall~~
16 ~~have been~~ is recorded, the party on whose behalf the same was filed
17 or ~~his~~ the party's attorney of record may cause ~~said the~~ notice to
18 be canceled in the office of the county clerk or register of deeds
19 of any county in which ~~said the~~ notice ~~may have~~ has been filed or
20 recorded. Such cancellation may be made by written release in the
21 same manner as such cancellations are entered on order of the
22 court. For the service ~~herein~~ required by this section, the county
23 clerk or register of deeds shall be entitled to charge and receive
24 fees in accordance with sections 33-109 and 33-112, to be paid by
25 the party causing the service to be performed.

26 Sec. 18. Section 25-1002, Reissue Revised Statutes of
27 Nebraska, is amended to read:

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1 25-1002. An order of attachment shall be approved by a
2 judge of any district court or county court only after there has
3 been presented to him or her an affidavit or affidavits based upon
4 personal knowledge (1) that the facts set forth in plaintiff's
5 ~~petition~~ complaint which state a valid cause of action and the
6 amount plaintiff is entitled to recover are true, (2) describing
7 the existence and approximate value of any of defendant's property
8 known to the plaintiff to be subject to the jurisdiction of the
9 court, and (3) stating specific facts demonstrating reasonable
10 cause that one or more of the grounds for an attachment enumerated
11 in section 25-1001 exist.

12 Sec. 19. Section 25-1063, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 25-1063. When it appears by the ~~petition~~ complaint that
15 the plaintiff is entitled to the relief demanded, and such relief
16 or any part thereof consists in restraining the commission or
17 continuance of some act, the commission or continuance of which
18 during the litigation would produce great or irreparable injury to
19 the plaintiff, or when, during the litigation, it appears that the
20 defendant is doing, or threatens, or is about to do, or is
21 procuring or suffering to be done, some act in violation of the
22 plaintiff's rights respecting the subject of the action and tending
23 to render the judgment ineffectual, a temporary injunction may be
24 granted to restrain such act, subject to the limitations of
25 sections 25-1062 to 25-1080. It may also be granted in any case
26 ~~where it is~~ specially authorized by statute.

27 Sec. 20. Section 25-1064.01, Reissue Revised Statutes of

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1 Nebraska, is amended to read:

2 25-1064.01. Every order granting an injunction and every
3 restraining order shall: (1) Set forth the reasons for its
4 issuance; (2) be specific in terms; (3) describe in reasonable
5 detail, and not by reference to the ~~petition~~ pleading or other
6 document, the act or acts sought to be restrained; and (4) be
7 binding only upon the parties to the action, their officers,
8 agents, servants, employees, and attorneys, and those persons in
9 active concert or participation with them who receive actual notice
10 of the order by personal service or otherwise.

11 Sec. 21. Section 25-1075, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 25-1075. If the injunction is granted without notice,
14 the defendant, at any time before the trial, may apply, upon
15 notice, to the court in which the action is brought or any judge
16 thereof, to vacate or modify the same. The application may be made
17 upon the complaint or petition and affidavits upon which the
18 injunction is granted, or upon affidavits on the part of the party
19 enjoined, with or without answer. The order of the judge allowing,
20 dissolving, or modifying an injunction shall be returned to the
21 office of the clerk of the court in which the action is brought and
22 recorded and obeyed as if made by the court.

23 Sec. 22. Section 25-1085, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 25-1085. If a complainant ~~shall desire~~ desires the
26 appointment of a receiver at the commencement of the action, ~~he~~
27 ~~shall pray~~ the complainant shall request such appointment in ~~his~~

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1 ~~bill the complaint.~~ If the occasion for a receiver ~~shall arise~~
2 ~~arises~~ while the suit is pending, the application shall be made by
3 a ~~motion~~ petition entitled in the cause, signed and verified by the
4 ~~applicant,~~ and setting forth the facts and circumstances making
5 such appointment necessary or proper.

6 Sec. 23. Section 25-1102, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 25-1102. An issue of fact arises ~~(1) upon material~~
9 ~~allegation in the petition denied by the answer, (2) upon a setoff~~
10 ~~or counterclaim presented in the answer and denied in the reply,~~
11 ~~and (3) upon material new matter in the answer or reply which shall~~
12 ~~be considered as controverted by the opposite party without further~~
13 pleading upon a material allegation in a pleading that is denied by
14 a responsive pleading or that is considered as denied or avoided
15 because no responsive pleading is required or permitted.

16 Sec. 24. Section 25-1321, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 25-1321. The complete record shall ~~be made up from~~
19 include the ~~petition~~ complaint, the process, the return, the
20 pleadings subsequent thereto, reports, verdicts, orders, judgments,
21 and all material acts and proceedings of the court. All +
22 ~~PROVIDED, however, that all~~ journal entries and all such filings as
23 are required to be entered in full in the appearance dockets,
24 shall, by reference, be made a part of the complete record for all
25 purposes, including the taxing of fees and costs, and need not be
26 reentered in the making up of such record; but if the items of an
27 account, or the copies of a paper attached to the pleadings, are

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1 voluminous, the court may order the record to be made by
2 abbreviating the same, ~~or~~ by inserting a pertinent description
3 thereof, or by omitting them entirely. Evidence ~~must not be~~
4 ~~recorded~~ introduced at any proceeding is not part of the complete
5 record of the cause.

6 Sec. 25. Section 25-1506, Revised Statutes Supplement,
7 2000, is amended to read:

8 25-1506. The order of sale on all decrees for the sale
9 of mortgaged premises shall be stayed for the period of nine months
10 after the entry of such decree, whenever the defendant shall,
11 within twenty days after the entry of such decree, file with the
12 clerk of the court a written request for the same. If the
13 defendant makes no such request within twenty days, the order of
14 sale may issue immediately after the expiration thereof. As to any
15 mortgage executed after September 28, 1959, if the original
16 maturity of indebtedness secured by the mortgage is more than
17 twenty years after the date of the filing of the ~~petition~~ complaint
18 to foreclose the mortgage and the mortgage covered a lot or lots,
19 or any part thereof, in a regularly platted subdivision, or parcel
20 of residential property not exceeding three acres in area, the stay
21 period shall be three months, and, as to such a mortgage executed
22 after October 9, 1961, if such original maturity is more than ten
23 years but not more than twenty years from and after the date of the
24 filing of the foreclosure ~~petition~~ complaint, the stay period shall
25 be six months.

26 Sec. 26. Section 25-1715, Reissue Revised Statutes of
27 Nebraska, is amended to read:

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1 25-1715. Costs may be allowed on a motion, ~~or demurrer,~~
2 in the discretion of the court or judge, not exceeding ten dollars,
3 which shall be absolute against the losing party on such ~~demurrer~~
4 ~~or motion, except that~~ ~~PROVIDED,~~ this provision shall not apply
5 to verbal motions and ~~demurrer~~ ~~ere~~ ~~tenus~~ during the course of the
6 trial.

7 Sec. 27. Section 25-2002, Revised Statutes Supplement,
8 2000, is amended to read:

9 25-2002. The proceedings to vacate or modify the
10 judgment or order on the grounds mentioned in subsection (4) of
11 section 25-2001 shall be by ~~petition verified by affidavit~~
12 complaint, setting forth the judgment or order, the grounds to
13 vacate or modify it, and the defense to the action, if the party
14 applying was defendant. On such ~~petition~~ complaint a summons shall
15 issue and be served as in the commencement of an action. Summons
16 shall not issue in any case in which there is upon the minutes of
17 the court, or among the files of the case, a waiver of error by the
18 party or the party's attorney, unless the court or a judge thereof
19 endorses upon the ~~petition~~ complaint permission to issue such
20 summons.

21 Sec. 28. Section 25-2005, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 25-2005. A judgment shall not be vacated on motion or
24 ~~petition~~ complaint, until it is adjudged that there is a valid
25 defense to the action in which the judgment is rendered, or, if the
26 plaintiff seeks its vacation, that there is a valid cause of
27 action; and ~~where~~ when a judgment is modified, all liens and

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1 securities obtained under it shall be preserved to the modified
2 judgment.

3 Sec. 29. Section 25-2124, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-2124. In an action for the recovery of real property,
6 it shall be sufficient if the ~~plaintiff~~ complaint states ~~in his~~
7 ~~petition~~ that ~~he~~ the plaintiff has a legal estate therein, and is
8 entitled to the possession thereof, describing the same, and that
9 the defendant unlawfully keeps ~~him~~ the plaintiff out of the
10 possession. It shall not be necessary to state how the plaintiff's
11 estate or ownership is derived.

12 Sec. 30. Section 25-2125, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 25-2125. It shall be sufficient in such action if the
15 ~~defendant in his~~ answer denies generally the title alleged in the
16 ~~petition~~ complaint, or that ~~he~~ the defendant withholds possession,
17 as the case may be; but if ~~he~~ the defendant denies the title of the
18 plaintiff, possession by the defendant shall be taken as admitted.
19 ~~Where he~~ If the defendant does not defend for the whole premises,
20 the answer shall describe the particular part for which defense is
21 made.

22 Sec. 31. Section 25-2137, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-2137. All ~~petitions~~ complaints for the foreclosure or
25 satisfaction of mortgages shall be filed in the district court
26 where the mortgaged premises are situated.

27 Sec. 32. Section 25-2138, Reissue Revised Statutes of

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1 Nebraska, is amended to read:

2 25-2138. Whenever a ~~petition shall be~~ complaint is filed
3 for the foreclosure or satisfaction of a mortgage, the court ~~shall~~
4 ~~have~~ has the power to decree a sale of the mortgaged premises, or
5 such part thereof as may be sufficient to discharge the amount due
6 on the mortgage, and the cost of suit.

7 Sec. 33. Section 25-2139, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 25-2139. When a ~~petition shall be~~ complaint is filed for
10 the satisfaction of a mortgage, the court ~~shall have~~ has the power
11 only to decree and compel the delivery of the possession of the
12 premises to the purchaser thereof.

13 Sec. 34. Section 25-2140, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-2140. After ~~such petition shall be~~ a complaint for
16 foreclosure or satisfaction of a mortgage is filed, while the same
17 is pending, and after a decree is rendered thereon, no proceedings
18 whatever shall be had at law for the recovery of the debt secured
19 by the mortgage, or any part thereof, unless authorized by the
20 court.

21 Sec. 35. Section 25-2142, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 25-2142. Upon filing a ~~petition~~ complaint for the
24 foreclosure or satisfaction of a mortgage, the complainant shall
25 state therein whether any proceedings have been had at law for the
26 recovery of the debt secured thereby, or any part thereof, and
27 whether such debt, or any part thereof, has been collected and

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1 paid.

2 Sec. 36. Section 25-2143, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 25-2143. If it ~~shall appear~~ appears that any judgment
5 has been obtained in a suit at law for the money demanded by such
6 ~~petition~~ complaint, or any part thereof, no proceedings shall be
7 had in such case, unless to an execution against the property of
8 the defendant in such judgment the sheriff or other proper officer
9 ~~shall have~~ has returned that the execution is unsatisfied in whole
10 or in part, and that the defendant has no property whereof to
11 satisfy such execution except the mortgaged premises.

12 Sec. 37. Section 25-2148, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 25-2148. Whenever a ~~petition shall be~~ complaint is filed
15 for the satisfaction or foreclosure of any mortgage, upon which
16 there ~~shall be~~ is due any interest on any portion or installment of
17 the principal, and there ~~shall be~~ are other portions or
18 installments to become due subsequently, the ~~petition~~ complaint
19 shall be dismissed upon the defendant's bringing into court, at any
20 time before the decree of sale, the principal and interest due,
21 with costs.

22 Sec. 38. Section 25-2162, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-2162. On the return day of the alternative writ, or
25 such further day as the court may allow, the party on whom the writ
26 shall have been served may show cause, by answer made, in the same
27 manner as an answer to a ~~petition~~ complaint in a civil action.

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1 Sec. 39. Section 25-2170, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-2170. The ~~petition must~~ complaint shall describe the
4 property, and the several interests and estates of the several
5 joint owners, or lessees thereof, if known. All tenants in common,
6 joint tenants, or lessees of any estate in land or interest
7 therein, or of any mineral, coal, petroleum, or gas rights, may be
8 compelled to make or suffer partition of such estate or estates in
9 the manner hereinafter prescribed.

10 Sec. 40. Section 25-2171, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 25-2171. If the number of shares or interests is known,
13 but the owners thereof are unknown, or if there are, or are
14 supposed to be, any interests which are unknown, contingent or
15 doubtful, these facts ~~must~~ shall be set forth in the ~~petition~~
16 complaint with reasonable certainty.

17 Sec. 41. Section 25-2178, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 25-2178. If the statements in the ~~petition~~ complaint and
20 answers are not contradicted ~~in the manner aforesaid,~~ by denial
21 under section 25-2174 or by the documentary proof exhibited, ~~as~~
22 ~~above required,~~ they shall be taken as true.

23 Sec. 42. Section 25-21,108, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 25-21,108. If, in the proceedings in partition, judgment
26 shall be entered directing partition, as provided in section
27 25-2179, the court shall, after partition or after the confirmation

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1 of the sale and the conveyance by the referee, determine a
2 reasonable amount of attorney's fees to be awarded ~~to the attorneys~~
3 ~~of record in the proceedings,~~ which amount shall be taxed as costs
4 in the proceedings. If the shares confirmed by such judgment and
5 the existence of all encumbrances of which the plaintiff had actual
6 or constructive notice were accurately pleaded in the original
7 ~~petition~~ complaint of the plaintiff, such attorney's fees ~~for the~~
8 ~~attorney~~ shall be awarded entirely to the attorney for the
9 plaintiff; otherwise, the court shall order such fees for the
10 attorneys to be divided among such of the attorneys of record in
11 the proceedings as ~~shall~~ have filed pleadings upon which any of the
12 findings in the judgment of partition are based. The court shall
13 also determine and tax as costs a reasonable fee for the referee.

14 Sec. 43. Section 25-21,113, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 25-21,113. In all actions to establish or quiet title to
17 an estate in real estate, all persons in whose favor any interest,
18 right, title, estate in, or lien upon such real estate appears of
19 record shall be made defendants by the names by which they are
20 designated on the record. When it is alleged in the ~~petition~~
21 complaint that there are persons who claim or appear to have some
22 interest in, right or title to, or lien upon such property, and
23 that the ownership of, interest in, right or title to, or lien upon
24 such property of such persons does not appear of record in or by
25 their respective names in the county wherein such property is
26 situated, and that the plaintiff, after diligent investigation and
27 inquiry, is unable to ascertain and does not know the names or

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1 whereabouts, if in this state, or the residence of such persons,
2 there shall also be designated as defendants in such action "all
3 persons having or claiming any interest in" (here inserting an
4 accurate and definite description of the property involved)
5 followed by the words "real names unknown". Judgments and decrees
6 rendered in such actions after the defendants so impleaded and
7 designated have been served as provided by statute, shall be
8 conclusive against all defendants impleaded and designated by name,
9 and also against all persons who are not in actual possession of
10 such property, whose ownership of, interest in, rights or title to,
11 or lien upon such property does not appear of record in or by their
12 respective names in the county wherein such property is situated.

13 Sec. 44. Section 25-21,115, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-21,115. It shall be sufficient to allege generally in
16 the ~~petition~~ complaint that the defendants claim or appear to have
17 some interest in, right or title to, or lien upon ~~said~~ the real
18 estate or a part thereof; and it ~~shall not be~~ is not necessary to
19 allege the nature of any adverse claim or that the value of
20 plaintiff's title or estate is lessened thereby. No lien of record
21 or mortgage of record, however, shall be affected by such action
22 unless it is particularly described, and payment or other legal
23 reason for its cancellation, or that it is barred by limitation, is
24 specifically alleged.

25 Sec. 45. Section 25-21,124, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 25-21,124. Such information shall consist of a plain

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1 statement of the facts which constitute the grounds of the
2 proceeding, addressed to the court, which shall stand for an
3 original ~~petition~~ complaint.

4 Sec. 46. Section 25-21,134, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 25-21,134. When an information is upon the relation of a
7 private individual, it shall be so stated in the ~~petition~~ complaint
8 and proceedings, and such individual shall be responsible for costs
9 in case they are not adjudged against the defendant. In other
10 cases the title of the cause shall be the same as in a criminal
11 prosecution, and the payment of costs shall be regulated by the
12 same rule.

13 Sec. 47. Section 25-21,156, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-21,156. Further relief based on a declaratory
16 judgment or decree may be granted whenever necessary or proper.
17 The application therefor shall be by ~~petition~~ complaint to a court
18 having jurisdiction to grant the relief. If the application ~~be~~ is
19 deemed sufficient, the court shall, on reasonable notice, require
20 any adverse party whose rights have been adjudicated by the
21 declaratory judgment or decree to show cause why further relief
22 should not be granted forthwith.

23 Sec. 48. Section 25-21,202, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 25-21,202. The claimant shall, in all cases, file a
26 ~~petition~~ complaint setting forth (1) the facts out of which ~~his~~ the
27 claim originally arose; (2) the action of the Legislature, or of

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1 any department of the government thereon, if any such has been had;
2 (3) what person or persons is the owner or are the owners thereof,
3 or in anywise interested therein; (4) that no assignment or
4 transfer of the same, or any part thereof, or interest therein, has
5 been made, except as stated in the ~~petition~~ complaint; and (5) that
6 the claimant is justly entitled to the amount claimed therein from
7 the state after allowance of all just credits and setoffs. ~~The~~
8 ~~petition shall be verified as now required in civil actions in the~~
9 ~~district courts.~~

10 Sec. 49. Section 25-21,206, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 25-21,206. The state may be sued in the district court
13 of ~~the county wherein the capital is situated~~ Lancaster County in
14 any matter founded upon or growing out of a contract, express or
15 implied, originally authorized or subsequently ratified by the
16 Legislature, or founded upon any law of the state. The ~~petition~~
17 complaint in such a case shall be as provided in section 25-21,202,
18 summons shall issue and be served in the same manner as
19 ~~hereinbefore~~ provided, ~~and the~~ in section 25-21,203. The rules of
20 pleading and practice in regard to other civil actions in the
21 district court shall be observed in all actions by or against the
22 state, as far as applicable except as otherwise ~~herein~~ provided,
23 ~~PROVIDED, that when~~ in sections 25-21,201 to 25-21,218. If an
24 action ~~has been~~ is commenced in a county other than as specified
25 ~~herein~~ in this section or section 25-21,203, the court in which the
26 action has been commenced shall have jurisdiction over such action,
27 but upon timely motion by a defendant, the court shall transfer the

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1 action to the proper court in the county in which the action should
2 or might have been commenced as ~~herein~~ provided in this section or
3 section 25-21,203. The court in the county to which the action is
4 transferred, in its discretion, may order the plaintiff to pay to
5 the defendant all reasonable expenses, including ~~attorney~~
6 attorney's fees of the defendant or defendants, incurred because of
7 the improper venue or in proceedings to transfer such action.

8 Sec. 50. Section 25-21,223, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 25-21,223. The summons shall be issued and directed with
11 a copy of the ~~petition~~ complaint attached to the summons, shall
12 state the cause of the complaint, the time and place of trial of
13 the action for possession, and the answer day for other causes of
14 action, and shall notify the defendant that if he or she fails to
15 appear judgment shall be entered against him or her. The summons
16 may be served and returned as in other cases or by any person,
17 except that the summons shall be served within three days,
18 excluding Saturdays, Sundays, and holidays, from the date of its
19 issuance and shall be returnable within five days, excluding
20 Saturdays, Sundays, and holidays, from the date of its issuance.
21 The person making the service shall file with the court an
22 affidavit stating with particularity the manner in which he or she
23 made the service. Trial of the action for possession shall be held
24 not less than ten nor more than fourteen days after the date of
25 issuance of the summons.

26 Sec. 51. Section 25-2210, Reissue Revised Statutes of
27 Nebraska, is amended to read:

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1 25-2210. On the appearance docket, the clerk of the
2 district court shall enter all actions in the order in which they
3 were brought, the date of the summons, the time of the return
4 thereof by the officer and his or her return thereon, the time of
5 filing the complaint or petition, and all subsequent pleadings. On
6 the general index he or she shall enter the names of the parties to
7 every suit, both direct and inverse, with the page and book where
8 all proceedings in such action may be found. The judgment record
9 shall contain the names of the judgment debtor and the judgment
10 creditor, arranged alphabetically, the date of the judgment, the
11 amount of the judgment, and the amount of costs, with the page and
12 the book where the judgment may be found. Transcripts of judgments
13 from county courts filed in the district court shall be entered
14 upon the judgment record. Whenever any judgment is paid and
15 discharged, the clerk shall enter such fact upon the judgment
16 record in a column provided for that purpose.

17 Sec. 52. Section 25-2221, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 25-2221. Except as may be otherwise more specifically
20 provided, the period of time within which an act is to be done in
21 any action or proceeding shall be computed by excluding the day of
22 the act, event, or default after which the designated period of
23 time begins to run. The last day of the period so computed shall
24 be included unless it is a Saturday, a Sunday, or a day during
25 which the offices of courts of record may be legally closed as
26 provided in this section, in which event the period shall run until
27 the end of the next day on which the office will be open.

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1 All courts and their offices may be closed on Saturdays,
2 Sundays, and these holidays: New Year's Day, January 1; Birthday
3 of Martin Luther King, Jr., the third Monday in January;
4 President's Day, the third Monday in February; Arbor Day, the last
5 Friday in April; Memorial Day, the last Monday in May; Independence
6 Day, July 4; Labor Day, the first Monday in September; Columbus
7 Day, the second Monday in October; Veterans Day, November 11;
8 Thanksgiving Day, the fourth Thursday in November; the day after
9 Thanksgiving; ~~and~~ Christmas Day, December 25; and all days declared
10 by law or proclamation of the Governor to be holidays. If any such
11 holiday falls on Sunday, the following Monday shall be a holiday.
12 If any such holiday falls on Saturday, the preceding Friday shall
13 be a holiday. Court offices shall be open on all other days. If
14 the date designated by the state for observance of any legal
15 holiday pursuant to this section, except Veterans Day, is different
16 from the date of observance of such holiday pursuant to a federal
17 holiday schedule, the federal holiday schedule shall be observed.

18 Sec. 53. Section 25-2226, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 25-2226. The words found in Chapter 25 ~~this code~~ shall
21 be construed and held to mean as follows: Complainant ~~shall mean~~
22 means plaintiff; bill ~~or complaint shall mean~~ petition means
23 complaint; suit ~~shall mean~~ means action or civil action; and decree
24 ~~shall mean~~ means judgment; and all other words and terms found in
25 ~~this code~~ Chapter 25, heretofore applicable to the chancery
26 practice hereby repealed, shall be so construed and held as to
27 carry out the intention of ~~this code~~ such chapter, prevent a

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1 failure of justice, and give adequate relief in all cases.

2 Sec. 54. Section 25-2704, Revised Statutes Supplement,
3 2000, is amended to read:

4 25-2704. In any civil action in county court, the
5 summons, pleadings, and time for filings shall be the same as
6 provided for civil actions in district court. ~~The summons shall be~~
7 ~~returnable twenty days after the date of issue as provided in~~
8 ~~section 25-507.01. The answer or demurrer of the defendant shall~~
9 ~~be filed within thirty days after service of the summons and~~
10 ~~petition or completion of service by publication, whichever is~~
11 ~~later, as provided in section 25-821. The reply or demurrer of the~~
12 ~~plaintiff shall be filed within fifteen days after the filing of~~
13 ~~the answer as provided in section 25-821. The court, for good~~
14 ~~cause shown, may extend the time for filing an answer or reply.~~
15 The A case shall stand for trial at the earliest available time on
16 the court docket after the issues therein are or, according to the
17 times fixed for pleading, should have been made up.

18 Sec. 55. Section 25-2805, Revised Statutes Supplement,
19 2000, is amended to read:

20 25-2805. All matters in the Small Claims Court shall be
21 tried to the court without a jury. Except as provided in section
22 25-2618.01, any defendant in an action or such defendant's attorney
23 may transfer the case to the regular docket of the county court by
24 giving notice to the court at least two days prior to the time set
25 for the hearing. Upon such notice the case shall be transferred to
26 the regular docket of the county court. At the same time as such
27 notice is given to transfer the case, any defendant or such

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1 defendant's attorney may demand trial by jury, and the Small Claims
2 Court shall forward the demand to the county court. The party
3 causing the transfer of a case from the Small Claims Court to the
4 regular docket shall pay as a fee the difference between the fee
5 for filing a claim in Small Claims Court and the fee for filing a
6 claim on the regular docket.

7 In any action transferred to the regular docket there
8 shall be no further pleadings, ~~demurrers~~, motions challenging
9 pleadings, or discovery unless ordered by the court upon a showing
10 that any such procedure is necessary to the prompt and just
11 determination of the action.

12 Sec. 56. Section 25-2924, Revised Statutes Supplement,
13 2001, is amended to read:

14 25-2924. (1) Settlement escrow is a one-time, voluntary
15 process by which the parties to an action seek to resolve their
16 dispute. The settlement escrow process may be initiated at any
17 time before trial by either party. The use of a settlement escrow
18 does not preclude the use of any other dispute resolution or
19 settlement process to which the parties may agree.

20 (2) Settlement escrow may only be used in district court
21 civil actions that involve only monetary remedies. Such remedies
22 may include, but are not limited to, damages, court costs, and
23 attorney's fees.

24 (3) If a settlement escrow is conducted and fails to
25 result in a settlement, the parties may not initiate a second
26 settlement escrow for the same action.

27 Sec. 57. Section 25-2925, Revised Statutes Supplement,

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1 2001, is amended to read:

2 25-2925. Subsequent to the initial filing of a district
3 court civil action involving only monetary remedies, ~~the parties to~~
4 ~~an action shall receive from the clerk of the court information~~
5 ~~regarding settlement escrow.~~ A a party to an action wishing to
6 initiate a settlement escrow shall notify the escrow agent in
7 writing. Upon receiving a written request from the initiating
8 party, the escrow agent shall contact the responding party in
9 writing to see whether or not the responding party also wishes to
10 participate. If both parties agree in writing to participate, the
11 escrow agent shall begin the settlement escrow. ~~Failure to agree~~
12 ~~to initiate a settlement escrow does not preclude an agreement by~~
13 ~~the parties to initiate a settlement escrow at a later time.~~

14 Sec. 58. Section 25-2928, Revised Statutes Supplement,
15 2001, is amended to read:

16 25-2928. The State Court Administrator's office shall
17 create all forms and worksheets used by escrow agents. and the
18 ~~information regarding settlement escrow that is distributed by the~~
19 ~~clerks of the courts.~~ The office shall train all escrow agents on
20 settlement escrow. Escrow agents shall complete settlement escrow
21 training conducted by the office prior to conducting a settlement
22 escrow.

23 Sec. 59. Sections 25-2922 to 25-2928 terminate on July
24 1, 2004.

25 Sec. 60. Section 33-107.01, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 33-107.01. A legal services fee of ~~two~~ five dollars

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1 shall be taxed as costs in each case filed in each separate
2 juvenile court and district court, including appeals to such
3 courts, and on each case filed in each county court except those
4 filed in county court pursuant to its jurisdiction under
5 subdivision (5) of section 24-517 or section 25-2802. A legal
6 services fee of ~~two~~ five dollars shall be taxed as costs for each
7 appeal and original action filed in the Court of Appeals and the
8 Supreme Court. Such fees shall be remitted to the State Treasurer
9 on forms prescribed by the State Treasurer within ten days after
10 the close of each month for credit to the Legal Aid and Services
11 Fund.

12 Sec. 61. Section 42-351, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 42-351. (1) In proceedings under sections 42-347 to
15 42-381, the court shall have jurisdiction to inquire into such
16 matters, make such investigations, and render such judgments and
17 make such orders, both temporary and final, as are appropriate
18 concerning the status of the marriage, the custody and support of
19 minor children, the support of either party, the settlement of the
20 property rights of the parties, and the award of costs and
21 attorney's fees.

22 (2) When final orders relating to proceedings governed by
23 sections 42-347 to 42-381 are on appeal and such appeal is pending,
24 the court that issued such orders shall retain jurisdiction to
25 provide for such orders regarding custody, visitation, or support
26 or orders shown to be necessary to allow the use of property or to
27 prevent the irreparable harm to or loss of property during the

1 pendency of such appeal, or other appropriate orders in aid of the
2 appeal process. Such orders shall not be construed to prejudice
3 any party on appeal.

4 Sec. 62. Section 44-2833, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-2833. (1) If the insurer of a health care provider
7 shall agree to settle its liability on a claim against its insured
8 by payment of its policy limits of two hundred thousand dollars and
9 the claimant shall demand an amount in excess thereof for a
10 complete and final release and if no other health care provider is
11 involved, the procedures prescribed in this section shall be
12 followed.

13 (2) A ~~petition~~ motion shall be filed by the claimant with
14 the court in which the action is pending against the health care
15 provider or, if no action is pending, the claimant shall file a
16 complaint in one of the district courts of the State of Nebraska,
17 seeking approval of an agreed settlement, if any, or demanding
18 payment of damages from the Excess Liability Fund.

19 (3) A copy of such ~~petition~~ motion or complaint shall be
20 served on the director, the health care provider, and the health
21 care provider's insurer and shall contain sufficient information to
22 inform the parties concerning the nature of the claim and the
23 additional amount demanded. The health care provider and his or
24 her insurer shall have a right to intervene and participate in the
25 proceedings.

26 (4) The director, with the consent of the health care
27 provider, may agree to a settlement with the claimant from the

1 Excess Liability Fund. Either the director or the health care
2 provider may file written objections to the payment of the amount
3 demanded. The agreement or objections to the payment demanded
4 shall be filed within twenty days after the ~~petition~~ motion or
5 complaint is filed.

6 (5) After the ~~petition~~ motion or complaint, agreement,
7 and objections, if any, have been filed, the judge ~~of the court in~~
8 ~~which such petition is filed~~ shall set the matter for trial as soon
9 as practicable. The court shall give notice of the trial to the
10 claimant, the health care provider, and the director.

11 (6) At the trial, the director, the claimant, and the
12 health care provider may introduce relevant evidence to enable the
13 court to determine whether or not the ~~petition~~ settlement should be
14 approved if it has been submitted on agreement without objections.
15 If the director, the health care provider, and the claimant shall
16 be unable to agree on the amount, if any, to be paid out of the
17 Excess Liability Fund, the amount of claimant's damages, if any, in
18 excess of the two hundred thousand dollars already paid by the
19 insurer of the health care provider shall be determined at trial.

20 (7) The court shall determine the amount for which the
21 fund is liable and render a finding and judgment accordingly. In
22 approving a settlement or determining the amount, if any, to be
23 paid from the Excess Liability Fund in such a case, the court shall
24 consider the liability of the health care provider as admitted and
25 established by evidence.

26 (8) Any settlement approved by the court may not be
27 appealed. Any judgment of the court fixing damages recoverable in

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1 any such contested proceeding shall be appealable pursuant to the
2 rules governing appeals in any other civil case.

3 Sec. 63. Section 44-2840, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-2840. (1) Provision is hereby made for the
6 establishment of medical review panels to review all malpractice
7 claims against health care providers covered by the Nebraska
8 Hospital-Medical Liability Act in advance of filing such actions.

9 (2) No action against a health care provider may be
10 commenced in any court of this state before the claimant's proposed
11 ~~petition~~ complaint has been presented to a medical review panel
12 established pursuant to section 44-2841 and an opinion has been
13 rendered by the panel.

14 (3) The proceedings for action by the medical review
15 panel shall be initiated by the patient or his or her
16 representative by notice in writing with copy of a proposed
17 ~~petition~~ ~~or~~ complaint served upon the director personally or by
18 registered or certified mail. Such notice shall designate the
19 claimant's choice of the physician to serve on the panel,
20 claimant's suggestion of an attorney to serve, and the court where
21 the action shall be filed, if necessary.

22 (4) The claimant may affirmatively waive his or her right
23 to a panel review, and in such case the claimant may proceed to
24 file his or her action directly in court. If the claimant waives
25 the panel review, the claimant shall serve a copy of the ~~petition~~
26 ~~or~~ complaint upon the director personally or by registered or
27 certified mail at the time the action is filed in court.

1 (5) The exercise of the waiver authorized by this section
2 shall not be subject to attack for the sole reason that the
3 claimant served the director with the notice prescribed by
4 subsection (3) of this section prior to July 10, 1984, if the
5 requirements of sections 44-2840 to 44-2847 have not been fulfilled
6 on such date.

7 Sec. 64. Section 44-2841, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 44-2841. (1) The medical review panel shall consist of
10 one attorney admitted to practice law in the State of Nebraska and
11 three physicians who hold unlimited licenses under the laws of this
12 state to practice medicine. The attorney shall act in an advisory
13 capacity and as chairperson of the panel, but shall have no vote.

14 (2) The medical review panel shall be selected in the
15 following manner:

16 (a) All physicians engaged in the active practice of
17 medicine in this state, whether in the teaching profession or
18 otherwise, who hold a license to practice medicine shall be
19 available for selection;

20 (b) Each party to the action shall have the right to
21 select one physician and, upon selection, such physician shall be
22 required to serve. The two physicians thus selected shall select
23 the third physician panelist. If one of the health care providers
24 involved is a hospital, a fourth panelist shall be selected who
25 shall be a hospital administrator selected by the hospital;

26 (c) When there are multiple plaintiffs or defendants,
27 there shall be only one physician or hospital administrator

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1 selected per side. The plaintiff, whether single or multiple,
2 shall have the right to select one physician and the defendant,
3 whether single or multiple, shall have the right to select one
4 physician;

5 (d) A panelist so selected shall serve, except that for
6 good cause shown he or she may be excused. To show good cause for
7 relief from serving, the panelist shall be required to serve an
8 affidavit upon a judge of a court having jurisdiction over the
9 claim when filed. The affidavit shall set out the facts showing
10 that service would constitute an unreasonable burden or undue
11 hardship. The court may excuse the proposed panelist from serving;

12 (e) Within twenty days after receipt of notification of a
13 proposed panelist by the plaintiff, the defendants shall select a
14 proposed panelist and advise the plaintiff or his or her attorney;

15 (f) Within twenty days of receipt of notice of any
16 selection, written challenge without cause may be made to the panel
17 member. Upon challenge, a party shall select another panelist. If
18 multiple plaintiffs or defendants are unable to agree on a
19 physician panelist or if two such challenges are made and
20 submitted, the judge shall submit a list consisting of three
21 qualified panelists and each side shall strike one and the
22 remaining member shall serve in place of the challenged panelist
23 designated by the party; and

24 (g) The parties may agree on the attorney member of the
25 board or, if no agreement can be reached, then five proposed
26 attorney members shall be designated by the judge having
27 jurisdiction of the cause. The parties shall then each strike two

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1 names alternately with the claimant striking first until both sides
2 have stricken two names and the remaining name shall be the
3 attorney member of the panel.

4 (3) If the members of the medical review panel have not
5 been selected within one hundred twenty days following filing of
6 the ~~petition~~ or complaint required by section 44-2840, the court
7 shall have authority to select members of the panel and to set a
8 specific date for the hearing.

9 Sec. 65. Section 44-2842, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 44-2842. (1) The evidence to be considered by the
12 medical review panel shall be promptly submitted by the respective
13 parties in written form only. If any party to the proceedings
14 fails to submit his or her evidence within a reasonable time after
15 notice from the panel requesting such evidence, the panel may
16 proceed to decide the matter on the evidence previously submitted.
17 The determination of reasonable time shall be made by the panel.
18 The evidence submitted may consist of medical charts, X-rays,
19 laboratory test results, excerpts of treatises, depositions of
20 witnesses including parties, and any other form of evidence
21 allowable by the medical review panel.

22 (2) Depositions of parties and witnesses may be taken
23 prior to the convening of the panel and prior to the commencement
24 of the action, but in such event the attorney for the medical care
25 provider shall be furnished with a copy of the ~~petition~~ complaint
26 which the claimant proposes to file at least ten days before any
27 deposition is taken. The patient shall have the right to request

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1 and receive all medical and hospital records relating to his or her
2 case which would be admissible in evidence in a court of law. The
3 chairperson of the panel shall advise the panel relative to any
4 legal question involved in the review proceeding and shall prepare
5 the opinion of the panel. A copy of the evidence shall be sent to
6 each member of the panel.

7 (3) Either party, after submission of all evidence and
8 upon ten days' notice to the other side, shall have the right to
9 convene the panel at a time and place agreeable to the members of
10 the panel. At such time either party shall have the right to
11 present argument concerning any matters relevant to issues to be
12 decided by the panel before the issuance of its report. The
13 chairperson of the panel shall preside at all meetings, which
14 meetings shall be informal.

15 (4) If the members of the medical review panel have not
16 convened within six months of the initiation of the proceeding, the
17 judge shall have authority to order the panel to convene.

18 Sec. 66. Section 45-103, Revised Statutes Supplement,
19 2000, is amended to read:

20 45-103. ~~Interest~~ For decrees and judgments rendered
21 before the operative date of this section, interest on decrees and
22 judgments for the payment of money shall be fixed at a rate equal
23 to one percentage point above the bond equivalent yield, as
24 published by the Secretary of the Treasury of the United States, of
25 the average accepted auction price for the last auction of
26 fifty-two-week United States Treasury bills in effect on the date
27 of entry of the judgment. For decrees and judgments rendered on

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1 and after the operative date of this section, interest on decrees
2 and judgments for the payment of money shall be fixed at a rate
3 equal to two percentage points above the bond investment yield, as
4 published by the Secretary of the Treasury of the United States, of
5 the average accepted auction price for the first auction of each
6 annual quarter of the twenty-six-week United States Treasury bills
7 in effect on the date of entry of the judgment. The State Court
8 Administrator shall distribute notice of such rate and any changes
9 to it to all Nebraska judges to be in effect two weeks after the
10 date the auction price is published by the Secretary of the
11 Treasury of the United States. This interest rate shall not apply
12 to:

13 (1) An action in which the interest rate is specifically
14 provided by law; or

15 (2) An action founded upon an oral or written contract in
16 which the parties have agreed to a rate of interest other than that
17 specified in this section.

18 Sec. 67. Section 60-4,105, Revised Statutes Supplement,
19 2000, is amended to read:

20 60-4,105. (1) Unless otherwise provided by statute, any
21 person aggrieved by a final decision or order of the director or
22 the Department of Motor Vehicles to cancel, suspend, revoke, or
23 refuse to issue or renew any operator's license, any decision of
24 the director made after consideration of advice from the Health
25 Advisory Board, or suspension of an operator's license under the
26 License Suspension Act may appeal to either the district court of
27 the county in which the person originally applied for the license

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1 or the district court of the county in which such person resides
2 or, in the case of a nonresident, to the district court of
3 Lancaster County within thirty days after the date of the final
4 decision or order.

5 (2) Summons shall be served on the department within
6 thirty days after the filing of the petition in the manner provided
7 for service of a summons in section 25-510.02. Within thirty days
8 after service of the petition and summons, the department shall
9 prepare and transmit to the petitioner a certified copy of the
10 official record of the proceedings before the department. The
11 department shall require payment of a five-dollar fee prior to the
12 transmittal of the official record. The petitioner shall file the
13 transcript with the court before answer day as provided in ~~section~~
14 ~~25-821~~ the pleading rules adopted by the Supreme Court.

15 (3) The district court shall hear the appeal as in equity
16 without a jury and determine anew all questions raised before the
17 director. Either party may appeal from the decision of the
18 district court to the Court of Appeals.

19 (4) The appeal procedures described in the Administrative
20 Procedure Act shall not apply to this section.

21 Sec. 68. Section 76-1002, Revised Statutes Supplement,
22 2000, is amended to read:

23 76-1002. (1) Transfers in trust of real property may be
24 made to secure (a) existing debts or obligations created
25 simultaneously with the execution of the trust deed, (b) future
26 advances necessary to protect the security, (c) any future advances
27 to be made at the option of the parties, or (d) the performance of

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1 an obligation of any other person named in the trust deed to a
2 beneficiary.

3 (2) Future advances necessary to protect the security
4 shall include, but not be limited to, advances for payment of real
5 property taxes, special assessments, prior liens, hazard insurance
6 premiums, maintenance charges imposed under a condominium
7 declaration or other covenant, and costs of repair, maintenance, or
8 improvements.

9 (3)(a) Except as provided in subdivision (b) of this
10 subsection, all items identified in subsection (1) of this section
11 are equally secured by the trust deed from the time of filing the
12 trust deed as provided by law and have the same priority as the
13 trust deed over the rights of all other persons who acquire any
14 rights in or liens upon the trust property subsequent to the time
15 the trust deed was filed.

16 (b)(i) The trustor or his or her successor in title may
17 limit the amount of optional future advances secured by the trust
18 deed under subdivision (a) of this subsection by filing a notice
19 for record in the office of the register of deeds of each county in
20 which the trust property or some part thereof is situated. A copy
21 of such notice shall be sent by certified mail to the beneficiary
22 at the address of the beneficiary set forth in the trust deed. The
23 amount of such secured optional future advances shall be limited to
24 not less than the amount actually advanced at the time of receipt
25 of such notice by the beneficiary.

26 (ii) If any optional future advance is made by the
27 beneficiary to the trustor or his or her successor in title after

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1 receiving written notice of the filing for record of any trust
2 deed, mortgage, lien, or claim against such trust property, then
3 the amount of such optional future advance shall be junior to such
4 trust deed, mortgage, lien, or claim. The notice under this
5 subdivision shall be sent by certified mail to the beneficiary at
6 the address of the beneficiary set forth in the trust deed.

7 (iii) Subdivisions (b)(i) and (ii) of this subsection
8 shall not limit or determine the priority of optional future
9 advances as against construction liens governed by section 52-139.

10 (4) The reduction to zero or elimination of the
11 obligation evidenced by any of the transfers in trust authorized by
12 this section shall not invalidate the operation of this section as
13 to any future advances unless a notice or release to the contrary
14 is filed for record as provided by law. All right, title,
15 interest, and claim in and to the trust property acquired by the
16 trustor or his or her successors in interest subsequent to the
17 execution of the trust deed shall inure to the trustee as security
18 for the obligation or obligations for which the trust property is
19 conveyed in like manner as if acquired before execution of the
20 trust deed.

21 Sec. 69. Section 76-1441, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 76-1441. The person seeking possession shall file a
24 ~~petition~~ complaint for restitution with the clerk of the district
25 or county court. The ~~petition~~ complaint shall contain (a) the
26 facts, with particularity, on which he or she seeks to recover; (b)
27 a reasonably accurate description of the premises; and (c) the

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1 requisite compliance with the notice provisions of the Uniform
2 Residential Landlord and Tenant Act. The ~~petition~~ complaint may
3 notify the tenant that personal property remains on the premises
4 and that it may be disposed of pursuant to section 69-2308. The
5 ~~petition~~ complaint may also contain other causes of action relating
6 to the tenancy, but such causes of action shall be answered and
7 tried separately, if requested by either party in writing.

8 Sec. 70. Section 71-1442, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 76-1442. The summons shall be issued and directed, with
11 a copy of the ~~petition~~ complaint attached thereto, and shall state
12 the cause of the complaint, the time and place of trial of the
13 action for possession, answer day for other causes of action, and
14 notice that if the defendant fails to appear judgment shall be
15 entered against him or her. The summons may be served and returned
16 as in other cases or by any person, except that the summons shall
17 be served within three days, excluding Saturdays, Sundays, and
18 holidays, from the date of issuance and shall be returnable within
19 five days, excluding Saturdays, Sundays, and holidays, from the
20 date of issuance. The person making the service shall file with
21 the court an affidavit stating with particularity the manner in
22 which he or she made the service. If diligent efforts have been
23 made to serve the summons in the manner provided in sections
24 25-505.01 to 25-516.01 but such efforts were unsuccessful, the
25 summons may be served in the manner provided in section 76-1442.01.

26 Sec. 71. Section 77-1904, Reissue Revised Statutes of
27 Nebraska, is amended to read:

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1 77-1904. In all foreclosure proceedings, the plaintiff
2 may include in one petition as many tax sale certificates, tax
3 deeds, or tax liens as the plaintiff may hold, regardless of
4 whether they are upon the same or different items of real property
5 and whether the real property covered by them is owned by the same
6 or different persons. It shall be sufficient, in the petition and
7 ~~in~~ In all foreclosure proceedings, including in the complaint, it
8 is sufficient in such foreclosure suit, to designate the township,
9 range, section, or part of section and the number and description
10 of any lot or block by initial letters, abbreviations, and figures.

11 In describing improvements on leased land for such notice
12 and proceedings, the words "Improvements Only Located Upon" shall
13 precede the designation of such property as set out in this
14 section.

15 Sec. 72. Section 77-1906, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-1906. The plaintiff may also, if desired, include as
18 or make the real property described in the ~~petition~~ complaint a
19 defendant and, if the owners of any such real property are unknown
20 and cannot be found, may proceed against the real property itself,
21 but in such case the service shall be as in the case of an unknown
22 defendant.

23 Sec. 73. Section 77-1917, Revised Statutes Supplement,
24 2000, is amended to read:

25 77-1917. Any person entitled to redeem real property may
26 do so at any time after the decree of foreclosure and before the
27 final confirmation of the sale by paying to the clerk of the

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1 district court the amount found due against the property, with
2 interest and costs to the date of redemption and, in addition
3 thereto, when the real property has been sold at sheriff's sale to
4 a purchaser other than the plaintiff, any subsequent taxes paid by
5 such purchaser, as shown by tax receipts filed by such purchaser
6 with the clerk of the district court, with interest at the rate
7 specified in section 45-104.01, as such rate may from time to time
8 be adjusted by the Legislature, from the date or dates of payment
9 of such taxes, and also interest on the purchase price at the same
10 rate, for the use of the purchaser, from the date of sale to the
11 date of redemption. During the pendency of a foreclosure action
12 any person entitled to redeem any lot or parcel may do so by paying
13 to the court the amount due with interest and costs, including
14 attorney's fees, provided for in section 77-1909, if requested in
15 the foreclosure ~~petition~~ complaint. Within thirty days after
16 receipt of payment of all amounts due, the holder of the tax sale
17 certificate shall dismiss its claim in the foreclosure proceeding
18 with respect to any redeemed tax sale certificate. The holder of
19 the tax sale certificate shall be required to provide the county
20 treasurer with written notice that a foreclosure suit has been
21 instituted and provide the county treasurer with an affidavit
22 setting forth the costs incurred in the foreclosure action and
23 indicating whether attorney's fees were requested in the
24 foreclosure ~~petition~~ complaint.

25 The person redeeming any lot or parcel shall be required
26 to provide the county treasurer with an appropriate receipt
27 evidencing the payment to the court of the amount due with interest

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1 and costs and the holder of the tax sale certificate shall file
2 with the county treasurer notice of its dismissal of the claim in
3 the foreclosure proceeding.

4 Sec. 74. The Revisor of Statutes shall assign section 1
5 of this act to Chapter 25, article 8, and section 2 of this act to
6 Chapter 25, article 2.

7 Sec. 75. This section and sections 1, 3, 56 to 61, 66,
8 68, and 76 of this act become operative on their effective date.
9 The other sections of this act become operative on January 1, 2004.

10 Sec. 76. Original sections 24-209, 33-107.01, and
11 42-351, Reissue Revised Statutes of Nebraska, sections 45-103 and
12 76-1002, Revised Statutes Supplement, 2000, and sections 25-2924,
13 25-2925, and 25-2928, Revised Statutes Supplement, 2001, are
14 repealed.

15 Sec. 77. Original sections 25-217, 25-318, 25-321,
16 25-323, 25-328, 25-330, 25-331, 25-501, 25-503.01, 25-504.01,
17 25-516.01, 25-531, 25-1002, 25-1063, 25-1064.01, 25-1075, 25-1085,
18 25-1102, 25-1321, 25-1715, 25-2005, 25-2124, 25-2125, 25-2137 to
19 25-2140, 25-2142, 25-2143, 25-2148, 25-2162, 25-2170, 25-2171,
20 25-2178, 25-21,108, 25-21,113, 25-21,115, 25-21,124, 25-21,134,
21 25-21,156, 25-21,202, 25-21,206, 25-21,223, 25-2210, 25-2221,
22 25-2226, 44-2833, 44-2840, 44-2841, 44-2842, 76-1441, 76-1442,
23 77-1904, and 77-1906, Reissue Revised Statutes of Nebraska, and
24 sections 25-519, 25-525, 25-1506, 25-2002, 25-2704, 25-2805,
25 60-4,105, and 77-1917, Revised Statutes Supplement, 2000, are
26 repealed.

27 Sec. 78. The following sections are outright repealed:

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- 1 Sections 25-801 to 25-823, 25-832 to 25-838, 25-841 to 25-856,
- 2 77-1905, and 77-1907, Reissue Revised Statutes of Nebraska.".